

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF THE MEETING, Public Session
Friday, August 6, 1999
9:30 a.m.

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:40 a.m. at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners William Deaver, Kathleen Makel and Carol Scott were present.

Item #1. Approval of the Minutes of the July 9, 1999, Commission Meeting.

The minutes of the July 9, 1999, Commission meeting were distributed to the Commission and made available to the public. Commissioner Makel moved to accept the minutes as presented. Commissioner Scott seconded the motion and it carried unanimously.

Item #2. Public Comment.

There was no public comment.

Items # 8, #10, #12.

Chairman Getman moved to approve the following items in the enforcement calendar as stated in the stipulations:

Item #8. *In the Matter of Scott R. Baugh, Baugh for Assembly '98, and David Bauer, FPPC No. 99/363 (\$2000).*

Item #10. *In the Matter of Citizens for Honest Government and Cecilia B. Hernandez, FPPC No. 96/703 (\$1,500).*

Item #12. *In the Matter of Marna Schnabel, FPPC No. 97/574 (6,000).*

Commissioner Makel seconded the motion, and it carried without opposition.

Items #3, #4, #5.

Chairman Getman noted that the Commission had received a letter from Attorney Chuck Bell suggesting that the policy on major donor cases be reconsidered. She added that the Commission had also received a letter from Tony Miller asking that the Commission not change its policy.

Chairman Getman moved that the Commission review the policy concerning major donors at the next Commission meeting because of the significant impact the number of cases has on the Enforcement Division.

Mr. Miller stated that he felt that \$1,000.00 to \$1,250.00 fines were appropriate in ordinary cases, and that he would not want to see them be lowered. He added that he felt that the FPPC should enforce the major donor laws rather than waiting for private attorney action.

Commissioner Makel seconded Chairman Getman's motion. The motion carried without opposition.

Item #6. In the Matter of Charles Edward Penna, FPPC No. 97/452.

Enforcement Counsel Deborah Bain presented a 1 count stipulation with a recommended fine of \$2,000.00.

Chairman Getman moved that the stipulation be accepted. Seconded by Kathleen Makel. Motion carried without opposition.

Item #7. In the Matter of Gerald R. Eaves, FPPC No. 95/557

Enforcement Counsel Melodee Anderson presented a 10-count stipulation with a recommended fine of \$12,500.00.

Commissioner Scott expressed her concern that the results of the vote were considered a mitigating factor. Since Mr. Eaves did not know how other people were going to vote she felt the end result of the vote should not be a factor in the amount of the fine. Commissioner Deaver agreed.

Ms. Anderson explained that it is an aggravating factor if there is a swing vote and a disqualified person participated and voted on the issue. If there was a unanimous decision, the vote would not be as critical to the passage, and therefore not a pivotal issue. Ms. Anderson reported that Mr. Eaves was not prohibited from voting on the competitive bid contract. She added that he was prohibited from participating and voting on the latter decisions.

Acting Enforcement Chief Mark Morodomi responded that it factors into the consideration of "public harm." Chairman Getman stated that it was a greater public harm in a swing vote, but not a mitigating circumstance if it was a unanimous or four to one vote.

Chairman Getman moved that the stipulation be approved. The motion carried with no opposition.

Item #9. In the Matter of Gail Margolis, FPPC No. 99/182.

Enforcement Counsel Amy Holloway presented a 2-count stipulation with a recommended fine of \$2,500.00.

Commissioner Scott recused herself on this matter.

Chairman Getman asked for clarification between this case and those cases discussed at the July Commission meeting, and the fines proposed for those cases. Ms. Holloway responded that this was a different case than the ones discussed at the last meeting, because this involved filings that were over a year late after substantial contact, instead of just two or three months late.

Chairman Getman moved that the stipulation be accepted. Commissioner Makel seconded the motion. The motion carried without opposition.

Item #11. In the Matter of Californians For Fair Business Practices, California Sports, Entertainment and Gaming Association, Alliance For Safe Communities, Residents to Protect Our Neighborhoods, Concerned Taxpayers of California, Californians Against Gaming Expansion, Save Our Neighborhoods, Public Information Service, FPPC No. 95/464.

Chairman Getman recused herself from this item and asked Commissioner Scott to serve as Acting Chairman for this item.

Acting Enforcement Chief Mark Morodomi presented the settlement of a number of actions the Commission had against the Bell Gardens Bicycle Club related to elections in 1995 concerning pro-gambling initiatives that Bell Gardens Bicycle Club was opposing.

On July 22, 1999, Judge John Lewis of the Sacramento Superior Court signed a judgment settling outstanding civil and administrative actions in the Matter of Californians for Fair Business Practices, et al. FPPC No. 95/464.

Item #13. In the Matter of Thomas Christopher Almeida, FPPC No. 96/453.

Enforcement Counsel Melodee Anderson presented a revised nine count stipulation from the original stipulation brought before the Commission on July 9, 1999. Ms. Anderson met with Ben Davidian, attorney for Mr. Almeida, and they agreed to change the wording of “gifts” in counts seven through 10 to “income.”

Chairman Getman expressed her concern over the wording in counts seven and eight. The charges indicated that the reimbursement for expenses from the Foundation was income that should have been reported. The Foundation is a nonprofit entity, and reimbursements for travel expenses received from a nonprofit entity are excluded as income under the statute. Ms. Anderson explained that the payment was not reimbursement for any travel expenses paid by Mr.

Almeida. Chairman Getman reiterated that she was not comfortable with it, as charged. She added that she was comfortable with count nine because it involved a for profit corporation, and therefore, it was not subject to the same statutory issue.

Chairman Getman moved to approve the stipulation with the deletion of counts seven and eight and with a reduction in the fine from \$18, 000.00 to \$14, 000.00. Commissioner Makel seconded the motion.

Commissioner Scott opposed the reduction in the amount of the fine.

Commissioner Deaver reluctantly supported the motion, but encouraged changing the financial disclosure forms in a manner that would allow enforcement fines for stealing funds.

The motion carried by a vote of three to one in favor of passage.

Item 14. In the Matter of Chris Miller, FPPC No. 97/232.

Commissioner Makel moved to reconsider a default decision and a fine of \$300,000.00 on Chris Miller for misappropriating campaign funds and filing false and misleading campaign statements. She noted implications for future cases which were not discussed at the July meeting. Specifically, she asked how the Commission would handle as a policy and/or enforcement matter cases where there exists a parallel criminal proceeding. Additionally, she expressed a concern that the FPPC fine might impact Mr. Miller's ability to make restitution to the victims. Lastly, she was concerned that this case raised double jeopardy issues. She felt that the Commission had not fully thought through the three issues and urged a further briefing on those issues before coming to a final decision on the fine. She made clear that she felt that Mr. Miller had committed a very serious crime, but that there were important policy questions which needed to be considered.

Commissioner Makel moved that the case be reconsidered at a later Commission date, for the purposes of formulating a policy on how the Commission should handle joint criminal and civil investigations.

Chairman Getman seconded the motion. She expressed concerns over the issues, and added that she had not understood that Mr. Miller had yet to be sentenced, and that the results of his sentencing could affect the amount of the fine imposed by the Commission. She urged a policy discussion about whether the Commission should wait for criminal proceedings to be concluded before the Commission take administrative action against the individual, or see if there is a way to work with criminal authorities and present both cases as a package.

Commissioner Scott noted that the Commission should always be open to changing their minds, but did not want the Commission to be put in a position where the worse someone's behavior is the more sympathetic the Commission becomes because of the mitigating factors the person has

created. She noted that there are orders of which fines are paid first, that restitution does come first and that none of the fines are chargeable in bankruptcy. She did not feel that the Commission should be concerned about the amount of the fine since the individual committed intentional actions. She disagreed that this case should be reconsidered because there was not coordination with other agencies.

Commissioner Makel responded that she felt that the Commission had not given a clear direction to the staff during the July 9, 1999 meeting. The staff had informed her that the past directive they had received from the Commission was not to proceed with an enforcement action if criminal proceedings had already commenced. However, that was not the policy if the criminal proceeding commenced during or after the administrative proceeding by the FPPC.

Acting Enforcement Chief Mark Morodomi explained that there had been at least two proceedings in the past where the Commission had joint jurisdictions and there was a criminal proceeding. It was determined that the criminal action would be more effective than an administrative action and that an administrative action could get in the way of a criminal action. The staff stayed their action and allowed the criminal proceeding to go forward until its end. In both cases staff judged that the criminal penalty was sufficient.

Commissioner Makel noted that the enforcement efforts for this case had commenced well before any criminal investigation had begun. She did not feel that the Commission should have to continue its enforcement efforts once the criminal investigation had begun, just because resources had been invested.

Mr. Morodomi noted that Mr. Miller's criminal sentencing will not occur until Aug. 26, 1999. Enforcement Counsel Deborah Bain added that he plead guilty to 12 counts, and that if he pays restitution he will not be sent to state prison. Mr. Morodomi updated the Commission on the current actions of Mr. Miller, including the possible filing of bankruptcy and the termination of some of his committees.

Commissioner Deaver stated that he felt the Commission should cooperate with other law enforcement agencies but did not believe that this case should be reopened. He agreed that the Commission should evaluate its policies regarding cooperation with other enforcement agencies.

Commissioners Deaver and Scott voted no. Commissioner Makel and Chairman Getman voted aye. The motion did not carry.

Chairman Getman asked staff to bring a policy discussion to a future meeting.

Item 16. Discussion of Conflict of Interest Improvement Project. Phase II Planning Memorandum

Legal Division Counsel John Vergelli presented the Planning Memo. He noted that the labels on

the categories (i.e., A, B, C, and D) don't necessarily reflect relative importance of the projects. Mr. Vergelli explained that Phase I took the FPPC existing rules and organized them into a more user-friendly fashion and that Phase I was completed last October. Phase II addresses more substantive issues in an effort to update the rules and make them clearer, as well as identifying which rules needed to be tougher or easier.

Oakland Mayor Jerry Brown expressed his concern over his perception that the regulations would not allow a public official to participate in a decision relating to property within 2500 feet of the public official's property. His home is in part of a redevelopment area, as is much of the downtown, and his efforts are prioritizing redevelopment of that area. As he understands it, he can speak to the press and write editorials, but cannot influence decisions. He requested that the Commission make areas of blight an exception that would allow individuals to move to those areas and continue to take an active role in redevelopment decisions. Mayor Brown asserted that the number of feet assigned in the regulation is arbitrary, and he cited the public generally and the rule of necessity exceptions as enough precedent to allow the Commission to make a rule that would allow interested citizens to participate in the redevelopment of the city and still prevent bias and the appearance of corruption.

Chairman Getman noted that in the rule of necessity case cited by Mayor Brown, the Mayor had the decision making authority. Mayor Brown answered that the City Council makes the decisions, but as he understands the statute, he could not influence or participate in that decision, putting him in an awkward position. He stated that, minimally, a chief executive should not be prevented from advocating for projects. He added that in areas of blight an exception should be made. He also felt that a rule could be crafted to cover the city council in the exception, too.

Mayor Brown noted that the public could still be protected from the high risk of a conflict if their public official lived in a redevelopment area through disclosure and using the public generally exception. He agreed that if all of the council members lived in the redevelopment area there could be biased decision making.

Mr. Vergelli explained how the conflict-of-interest rules apply in redevelopment areas. He also noted that the different definitions of the "public generally" did not include one that would apply to Mayor Brown's case. Cases involving a public official who resides in a redevelopment area have been found to be a conflict of interest, and the Court of Appeals has upheld that position.

Commissioner Scott responded that she did not want to be encouraging potential conflicts. She explained that she wanted to see rules applied that would allow a public official to live in the inner city, and stand behind what he believes.

Commissioner Makel noted that she did not believe that these issues violated the statute.

Legal Division Chief Steve Churchwell clarified the test for "public generally" and discussed Mayor Brown's case. He noted that the Commission was focusing on an exception to the rule,

and suggested that it would be better to wait until the rule has been looked at. Mr. Vergelli outlined different ways that the issue could be looked at during the evaluation of the process.

Mayor Brown suggested that the statute distinguish the making of decisions from influencing and participating.

Commissioner Deaver noted that the regulations must be written in a way that will not leave loopholes, and that the Commission needed to be very aware that the public perception of people in public office is probably not as high as it should be, and must be considered when looking at the regulations.

Erin Niemela, testifying on behalf of Senator Don Perata, reported that the Senator strongly supports a change in the current regulations surrounding conflict of interest for redevelopment officials. She suggested current regulations disproportionately affect urban centers like Oakland. She stated that Senator Perata supports Mayor Brown's position. Senator Perata requests that the Commission consider this be an urgent issue.

Michael Martello, City Attorney of Mountain View and the Chair of the League of California Cities' FPPC Committee, stated that the League shares the concerns of Oakland and feels that the issue should be studied. He encouraged the Commission to have an interested persons meeting, involving city attorneys and county counsels and other professionals throughout the state. He added that city attorneys throughout the state are concerned about the real estate issues.

Liane Randolph, from the League of California Cities' FPPC Committee supported Mr. Martello's position and noted the frustration felt by planning commissioners and city council members and offered the League's help in making the regulations easier to understand and in making the applications and rules more consistent. She urged an informal task force be formed which would include city attorneys and county counsels to work with the FPPC staff.

Eileen Reynolds, representing the California Association of Realtors stated their concern that many realtors who are involved in local government issues are having to recuse themselves from votes on many local land use issues because of the conflict of interest regulations. She encouraged the Commission to make this a top priority and offered the participation of the California Association of Realtors if a task force is formed. She agreed to try to get information that would indicate how many local officials are affected by this issue.

Mr. Vergelli responded that there is a need for outreach and education because there is some confusion about the law. He requested authorization to meet with people and organizations and work with them to help people better understand the regulations. Chairman Getman encouraged Mr. Vergelli to meet with the people and organizations the FPPC regulates.

Commissioner Scott requested a work plan showing the proposals, the goals, the way the regulation will accomplish those goals, what the regulation does or does not do, ways to improve

it, identifying exceptions, and then get to the specifics. She did not want the process started all over, but felt that the bigger questions had not been addressed. She added that she wanted to see suggestions and opinions from the public giving the Commission options to choose from, as well as a summary of what the Commissioners would see with the next proposal.

Mr. Vergelli noted that every comment from the public was in the memo. There was a comment from the California Board of Realtors regarding the offensive use of conflicts to disqualify an official and it was included in the memo. He stated that there were not that many of those incidents, but added that the incidents which did occur were serious. He added that staff used the normal interested persons mailing list, the web site and personal contact to those persons who have previously shown an interest in the issue, to solicit input for the report.

Commissioner Scott suggested that staff solicit input again.

Item 15. Hearing on the request by Chief Counsel Kathryn Tobias on behalf of the California Integrated Waste Management Board for a formal opinion of the Commission regarding the application of the “legally required participation” exception when a vacancy exists. (In re Tobias, No. 0-99-156.)

Legal Division Counsel Julia Butcher presented the Opinion, outlining different options for the Commission to consider.

Elliot Block, Staff Counsel for the California Integrated Waste Management Board (CIWMB), spoke on behalf of General Counsel Kathryn Tobias. Mr. Block stated that the CIWMB cannot act on anything related to the Rigid Plastic Packaging Container (RPPC) program at the present time because they do not have a quorum because of vacancies and a conflict by one member of the Board. He stated that there is no deadline for the current issue, the vote on the 1997 recycling rate for Rigid Plastic Packaging Containers, except that it must be done annually.

Chairman Getman asked if it was clear that Mr. Roberti had a conflict.

Mr. Block responded that it is highly likely that it will turn out that Mr. Roberti had a conflict. Since the standard is that Mr. Roberti knows or should have known that he had a conflict, he has not voted on the issue and that is why they brought the question to the Commission. He stated that it was possible to find out if Mr. Roberti has a conflict, but that it would take a long time to get that determination and he described the efforts they had made so far.

Ralph Chandler, Executive Director for the CIWMB stated that the CIWMB is in governmental paralysis on the RPPC program. Mr. Chandler stated that the Governor’s priority on appointments is focused on regional Boards and that the Governor felt that the CIWMB is not a problem because they have a quorum.

Chairman Getman stated that she felt they should treat the issue as if Mr. Roberti has a conflict.

Comparing this case with other cases, she did not see that the Commission had the authority to stop government decisions from being made. She noted that even if there is a conflict, Board members have been allowed to vote if it was necessary for a decision to be made. Local Boards and Commissions may not be able to find persons to serve, and she felt it was important for the local governments to continue to make essential decisions. She was not comfortable with the Commission determining whether what another governmental agency was doing was important enough to proceed. Since the CIWMB has a statutory duty to make a decision, she felt that the Commission did not have the authority to determine whether that was a critical decision.

Commissioner Makel added that the timing of the issue should be considered. If an appointment could be expected in a specific amount of time, then the rule might need to indicate that a decision could wait until the appointment was made, avoiding the conflict.

Commissioner Deaver noted that it would be difficult to write a regulation that would accomplish this without creating other problems.

Chairman Getman suggested that it could be addressed by saying that there has been no showing that the decision could be delayed in this case. Commissioner Makel added that it might be an incentive for the appointing authority to make an appointment.

Commissioner Scott felt that there was confusion between the statutory rule and the common law rule in instances where there was a vacancy and instances in which there was a disqualification. She noted that the public harm in this case seemed indirect. She stated that she would vote to agree that in this instance Mr. Roberti could vote in a very limited number of circumstances. She suggested that he might be limited to vote with regard to the rate and not whether to accept certifications.

Commissioners Scott and Deaver agreed that the opinion should be narrowly worded to cover these specific circumstances only.

Scott Minert, Deputy County Counsel for Fresno County, stated the importance of this decision because this issue is dealt with on a daily basis with smaller public bodies. He felt that the decision needed to be carefully crafted, very specific, and very narrow. Mr. Minert noted a fact scenario involving a water district, but added that there would be more.

Chairman Getman moved that the Commission issue an Opinion stating that it is appropriate to assume that Mr. Roberti has a conflict of interest and that, despite the conflict of Mr. Roberti, he be allowed to participate as a member of the Board in order to make a quorum and reach a decision on the recycle rates.

Commissioner Scott indicated that any indirect decisions would have to be evaluated by the Commission or the staff.

Chairman Getman noted that the opinion should provide guidance on the circumstances of this case, but that it would be hard at this time to say what effect it would have on other cases.

Mr. Block noted that he understood that this Opinion was just for this decision and that each individual new decision that might come up would still have to be analyzed separately and that the Commission was not delivering an opinion about any of those other decisions specifically.

General Counsel Steve Churchwell advised Mr. Block that the CIWMB should wait until the Opinion was adopted by the Commission before Mr. Roberti be allowed to participate in the recycling rate decision, noting that even if the FPPC did not start an Enforcement case, other enforcement agencies could.

Commissioner Makel requested that the Opinion be made very specific about the Commissions' determination that there could not be a delay.

Commissioner Makel seconded the motion.

The Commissioners discussed the wording of the Opinion and Chairman Getman agreed to draft the Opinion.

The motion carried 4-0.

Item #17 and #18: Amendment or adoption of campaign reporting regulations and approval of changes to campaign forms.

Item #17: Legal Division Counsel Hyla Wagner presented the four regulations proposed. She noted that there have not been any changes or comments since the pre-notice version.

Kim Alexander, President of the California Voter Foundation, stated their support of the changes, noting the importance of zip codes and asking the Commission to clarify to the filers that they must provide their zip codes.

Attorney Diane Fishburn commented on the accrued expense regulation (Section 18421.6), requesting that "excluding loans" be added to the first section. She also requested that the regulation include an effective date of the changes. Ms. Wagner responded that the wording of the first section could be changed, but that the effective date is not put in the regulations, but will be in the instructions. She noted that city clerks will be allowed to continue to accept some of the old forms for a certain time period, and that FPPC Technical Assistance Division will be sending out guidelines explaining the procedure.

Ms. Fishburn requested that the accrued expense regulation should include certain contracts for services or goods in the exception for regularly recurring administrative overhead expenses.

Ms. Wagner responded that the regulation as drafted does not include contracts for goods and services but that staff could examine that in the future.

Chairman Getman asked for clarity and cited a hypothetical example. Ms. Fishburn noted the “gray areas” in how to report accrued expenses, and the difficulty presented with the timing of receiving invoices and then reporting them.

Ms. Fishburn asked that the staff look at this part of the regulation again to find a better way to handle the disclosure of contract expenses.

Chairman Getman motioned that the regulation be adopted, with a change in regulation 18421.6 (a) saying that “Accrued expenses (excluding loans) owed by a recipient committee which remain outstanding shall be reported with each campaign statement,” and with a change in the first line of subsection (b) to read, “An accrued expense (excluding loans) shall be reported as of the date . . .” Commissioner Deaver seconded the motion. The motion carried without opposition.

Item #18: Carla Wardlow presented the forms simplification project, noting revisions to forms 410, 461, 496, 497, 501 and 502, and noting a new form 498 for slate mailer organizations. Forms 420, 490, and 419 had the most significant changes and have been consolidated into one form-Form 460. The changes in the regulations have been incorporated. The new forms will be mailed out as soon as possible, but the old forms will continue to be accepted with the recommendation that the new forms be used for the first filing beginning January 1, 2000.

Ms. Fishburn supported the consolidation of forms. She noted her concern that Form 460 should not include categorization of contributors by type, since that information will be reported in the electronic filings. Ms. Wagner responded that it is important to have the same version for both the electronic filing and the paper forms, and that for candidates who do not reach the threshold for electronic filing, the Secretary of State will still need to have that information for key data entry of the paper forms.

David Hulse, of the Secretary of State’s Office stated that the Secretary of State’s Office needed that information to file the forms electronically, and that he agreed that the paper form needed to be the same as the electronic form. He also noted that if the forms are approved today, he will go back to the Secretary of State’s Office and adjust their automation process to incorporate the Commission changes into the Cal format, the X-12 format, and into their presentation on the Internet.

Ms. Fishburn noted that on the summary page of Form 460, there is a new line for entering non-monetary contributions received by a committee into total expenditures. She stated that this was misleading, inflates expenditures, results in double counting of expenditures, and cited examples of those situations.

Ms. Wagner explained that the rationale for including non-monetary expenditures in a candidate's total was because it can result in the under reporting of expenditures in some cases. She noted that the Secretary of State, the Federal system, and others add in-kinds into the total expenditures.

Ms. Alexander noted that it is very easy to overlook what the full resources of a campaign are if one just reads the expenditure line without the non-monetary contributions included. She suggested switching the lines so both totals would show.

Chairman Getman asked staff to address the issue of double reporting.

Chairman Getman motioned that the forms changes be approved. Seconded by Commissioner Makel. The motion carried with no opposition.

Item #19. Request to rescind Leidigh Advice Letters, A-99-200; A-99-200a and/or issue an opinion regarding whether the prohibition in Government Code § 85320 applies to U.S. citizens domiciled abroad; or, in the alternative, to support urgency legislation amending § 85320.

Attorney Robert Leidigh presented his request, pointing out that his clients can make contributions to the Livermore City Council election, but not to the ballot measures on the same ballot at the same time. He stated that this violates their rights to free speech, freedom of association and equal protection. He asked the Commission to rescind and reverse the advice letters.

Mr. Leidigh was concerned that in the first letter staff took a "plain reading" approach, and in the second letter ignored the "plain reading" approach. Mr. Leidigh noted that time was very important on this issue because of an upcoming election.

Chairman Getman asked whether a ruling that a U.S. citizen inside the United States is not a foreign principal would solve the problem for all of Mr. Leidigh's clients.

Mr. Leidigh responded that it would not solve the problem of all of his clients.

Chairman Getman pointed out that the statute is so clear that there is little the Commission can do. She agreed that there may be a possible solution in the definition of a foreign principal in the statute, but that Mr. Leidigh's request to construe the statute in a way that would allow his request was difficult to do.

Mr. Leidigh presented examples of past Commission cases where the Commission had done just that when there were cases of unintended consequence.

Commissioner Makel advised Mr. Leidigh that if he had case law saying that in California the

rule is, “that a statute that is very clear can be disregarded on a showing that it would be contrary to the clear intent of the Legislature,” then she might agree with him.

Mr. Leidigh cited the Watson case. Commissioner Makel noted that the Watson case was an absurd result case, and that this case is a wrong result, possibly an unconstitutional result, but not an absurd result case. She stated that when the law is plain, the Commission cannot go beyond it to the Legislative intent.

Chairman Getman, the Commissioners, Mr. Leidigh and Mr. Churchwell discussed the differences between “foreign national,” and “foreign principal.”

Chairman Getman explained that she did not see how the Commission could fix this problem. She was very uncomfortable rewriting a statute even knowing that it was probably written wrong. She suggested that the courts might have been a better forum. She noted that if there was a way that it could be construed and narrowed without rewriting it, she would be in agreement.

Mr. Leidigh requested that the Commission sponsor legislation to resolve this issue. He noted that even if this is done as an urgency measure, it could still be October before this is resolved, with the election being held in November.

Mr. Churchwell stated that the answer was not entirely clear, and he admitted that Mr. Leidigh’s interpretation of the statute was colorable, although not the best one.

Chairman Getman motioned that the Commission hold this item over for further consideration at the September meeting, and that the Commission contact Secretary of State Jones for clarification of his intent. Once that clarification has been done, the Commission will quickly write a letter to the Legislature bringing this problem to their attention, and to act as a cosponsor if Secretary of State Jones is comfortable sponsoring legislation to fix the problem. Commissioner Makel seconded the motion. The motion carried unanimously.

Mr. Leidigh noted that the Secretary of State’s Office has been kept apprised of the situation.

Items #20, #21, and #22: Legislative Report; Litigation Report; and Executive Director’s report:

Chairman Getman deemed these reports submitted by consent. She asked Mr. Churchwell to state the update on Proposition 208.

Mr. Churchwell reported that there would be a status conference on the proposition on Friday, August 13, 1999. The intervenors were going to try to get a stipulation from all the parties that the entire matter be put over until the U.S. Supreme Court rules in the *Shrink Missouri Government PAC v. Adams* case in Missouri which will be heard on October 5, 1999, and will be decided after the first of the year. He requested permission to oppose that stipulation. There was

no objection.

Commissioner Scott was excused to leave the meeting early.

Item #23: Discussion of Personnel. (Gov. Code § 11126(a)(1).)

This item was considered in closed session.

Item #24: Pending Litigation. (Gov. Code § 11126(e)(1).)

This item was dropped off of the calendar.

The meeting adjourned at 5:15 p.m.

Dated: September 13, 1999.

Prepared by:

Sandra A. Johnson
Executive Secretary

Approved by:

Chairman Getman